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Indiana Imposes Requirements on Physician Noncompete Provisions

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The Indiana Legislature passed House Bill 1004 which Indiana's Governor signed into law on March 18, 2020. Section 8 of the Bill creates new law affecting physician noncompete agreements and physician separations and goes into effect on July 1, 2020.

New chapter, IC 25-22.5-5.5 sets out five provisions that must be included in any noncompete agreement between an employer and a physician "originally entered into on or after July 1, 2020." The requirements imposed by IC 25-22.5-5.5 are as follows: 1) a provision that requires the employer to provide a physician with a copy of any notice, sent to any patient the physician treated within the prior two years, relating to that physician's departure (without disclosing patient names or contact information); 2) a provision that requires the employer to, in good faith, provide the physician's last known contact information to any patient, treated by the physician in the preceding two years, who requests such information; 3) a provision that provides the physician a mechanism for obtaining medical records of a patient whom the physician treated in the preceding two years, following receipt of the patient's consent; 4) a provision allowing the physician the option to purchase a complete and final release from the terms of a non-compete at a reasonable price; and, 5) a provision that prohibits providing patient medical records to a requesting physician in a format that materially differs from the format used to create or store the record, unless otherwise agreed. The Legislature did not define "reasonable price" or provide any guidance or factors as to what a reasonable price might be in any individual circumstances. It is not clear from the legislation whether the parties may agree on a reasonable price when drafting the agreement, whether demanding an unreasonable price would invalidate the noncompete agreement, or whether a court may determine what constitutes a reasonable price.

House Bill 1004 also adds I.C. 25-22.5-17. With the exception of the buyout provision for noncompete provisions, it replicates the requirements set forth above for any physician who leaves the employment of an employer on or after July 1, 2020. Of interest, the provisions referenced above relate only to physicians. They do not relate to nurse practitioners or physician assistants, for example.